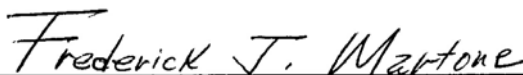


1 Commissioner was substantially justified with respect to the procedural issue on which
2 plaintiff prevailed in our November 25th Order. See Flores v. Shalala, 49 F.3d 562, 566 (9th
3 Cir. 1995).

4 Plaintiff raised four issues challenging the Commissioner's denial of his application
5 for disability benefits. We affirmed the ALJ's conclusions on three issues, and remanded the
6 case to the ALJ for further clarification of the fourth issue, relating to the plaintiff's ability
7 to perform his past relevant work as a cashier. Specifically, we asked the ALJ to further
8 consider a conflict between the plaintiff's "sedentary" residual functional capacity and the
9 conclusion that he could perform his past relevant work as a cashier, which the Dictionary
10 of Occupational Titles (DOT) classifies as "light" work. In reaching our decision to remand,
11 we were aware that the regulations provide that the DOT classifications are rebuttable,
12 Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995), and that vocational expert testimony
13 and published sources other than the DOT are authoritative. See 20 C.F.R. §§
14 404.1566(d)(2)-(5),(e); 20 C.F.R. § 404.1560(b)(2). However, because the ALJ had not
15 expressly resolved this conflict, we remanded for further review. We expressly stated in our
16 order, however, that "[w]e express no opinion as to the ALJ's determination that plaintiff is
17 capable of performing his past relevant work." Order at 7. Accordingly, we conclude the
18 Commissioner's position was substantially justified.

19 **IT IS THEREFORE ORDERED DENYING** plaintiff's application for
20 attorney's fees (doc. 23).

21 DATED this 8th day of June, 2006.

22
23 
24 Frederick J. Martone
25 United States District Judge
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